

Sept. 12, 2017

Please consider this a request under provisions of the Freedom of Information Act and the Electronic Freedom of Information Act, 5 U.S.C § 552 and under 40 CFR §2, "Procedures for disclosure of records under the Freedom of Information Act."

Erik Wemple of the Washington Post, whose email address is erik.wemple@washpost.com, published a story Sept. 7, 2017, about the EPA's criticisms of recent reporting by AP journalist Michael Biesecker. The article can be read here:

<https://www.washingtonpost.com/blogs/erik-wemple/wp/2017/09/07/what-prompted-the-epa-to-attack-an-ap-reporter-over-his-accurate-harvey-reporting/>.

In the article, at least two unidentified EPA officials, speaking anonymously, were cited making criticisms and disclosures about Mr. Biesecker to Mr. Wemple. These disclosures included that Mr. Biesecker was subscribed to receive EPA press releases by email, that the EPA is able to monitor which emailed press releases Mr. Biesecker was opening and reading, that the EPA concluded that Mr. Biesecker "very rarely" opened or read press releases that reflect positively about Administrator Scott Pruitt, and that the EPA unilaterally suspended sending press releases to Mr. Biesecker. We understand that at least one official in the EPA headquarters Office of Public Affairs shared, showed or sent Mr. Wemple an analytics screen showing which EPA press releases on various subjects and dates were secretly recorded as being opened or read by Mr. Biesecker.

Mr. Biesecker is a United States citizen covered under the U.S. Privacy Act. We will supplement this request with a Privacy Act waiver signed by Mr. Biesecker that will be limited to any records production only to The Associated Press.

Here are the records I am requesting:

- I am seeking copies of phone logs, recordings, emails, text messages, memoranda or other records representing or reflecting communications or notes about communications by employees or contractors in EPA's headquarters Office of Public Affairs with journalists at the Washington Post, including Mr. Wemple, between Sept. 1, 2017, and the date that processing actually begins on this request. The email searches should include searching for records with "washpost.com" or "washingtonpost.com" or "Erik" or "Wemple" in the "to" or "from" fields; records with "Biesecker" or "Michael" or "Pace" or "Julie" or "Buzbee" or "Sally" or "AP" or "Associated Press" in the subject line or message body; and other searches that might identify responsive records. I request that, where possible, the searches of the relevant email accounts be performed by a designated FOIA officer or IT staffer, rather than EPA staffers in the specific component offices searching their own email

accounts. Records searches should include any private or personal accounts or devices that were used to conduct agency business.

- I am also seeking copies of any phone logs, recordings, emails, text messages, memoranda or other records reflecting communications or notes about communications by employees or contractors in EPA's headquarters Office of Public Affairs with employees or contractors in EPA's Office of Privacy, including the agency Privacy Act officer or the agency chief privacy officer, between Sept. 1, 2017, and the date that processing actually begins on this request, on the subject of whether EPA's disclosures about Mr. Biesecker to Mr. Wemple violated the Privacy Act or other U.S. laws, regulations, policies or directives. I request that, where possible, the searches of the relevant email be performed by a designated FOIA officer or IT staffer, rather than EPA staffers in the specific component offices searching their own email accounts. Records searches should include any private or personal accounts or devices that were used to conduct agency business.
- I am also seeking copies of any phone logs, recordings, emails, text messages, memoranda or other records reflecting communications or notes about communications by employees or contractors in EPA's headquarters Office of Public Affairs with employees or contractors in EPA's Office of Inspector General between Sept. 1, 2017, and the date that processing actually begins on this request, on the subject of whether disclosures about Mr. Biesecker to Mr. Wemple or other actions by EPA directed at Mr. Biesecker violated the Privacy Act or other U.S. laws, regulations, policies or directives. I request that, where possible, the searches of the relevant email accounts be performed by a designated FOIA officer or IT staffer, rather than EPA staffers in the specific component offices searching their own email accounts. Records searches should include any private or personal accounts or devices that were used to conduct agency business.
- I am also seeking copies of any phone logs, recordings, emails, text messages, memoranda or other records reflecting communications or notes about communications by employees or contractors in EPA's headquarters Office of Public Affairs with employees or contractors in EPA's Office of General Counsel between Sept. 1, 2017, and the date that processing actually begins on this request, on the subject of whether disclosures about Mr. Biesecker to Mr. Wemple or other actions by EPA directed at Mr. Biesecker violated the Privacy Act or other U.S. laws, regulations, policies or directives. I request that, where possible, the searches of the relevant email accounts be performed by a designated FOIA officer or IT staffer, rather than EPA staffers in the specific component offices searching their own email accounts. Records searches should include any private or personal accounts or devices that were used to conduct agency business.
- I am also seeking copies of any phone logs, recordings, emails, text messages, memoranda or other records reflecting communications or notes about communications by employees or contractors in EPA's headquarters Office of

Public Affairs with employees or contractors in EPA's Ethics Office between Sept. 1, 2017, and the date that processing actually begins on this request, on the subject of whether disclosures about Mr. Biesecker to Mr. Wemple or other actions by EPA directed at Mr. Biesecker violated the Privacy Act or other U.S. laws, regulations, policies or directives. I request that, where possible, the searches of the relevant email accounts be performed by a designated FOIA officer or IT staffer, rather than EPA staffers in the specific component offices searching their own email accounts. Records searches should include any private or personal accounts or devices that were used to conduct agency business.

- I am also seeking copies of, and records about, the System of Records Notice, or SORN, for the service the EPA described to the Washington Post for tracking which government press releases are opened or read by recipients. The records would presumably be in the possession of the Office of Public Affairs, which uses the service; the Office of Privacy; or the Office of Environmental Information. A SORN is required under the Privacy Act for all IT systems from which information is retrieved by the name of an individual, or by any number, symbol or other unique identifier assigned to that individual, such as an email address. See <https://www.epa.gov/sites/production/files/2013-11/documents/cio2151-p-03.1.pdf>. I have reviewed the Federal Register for EPA-filed SORNs and I am unable to find one that appears to describe the EPA's press release service. Additionally, I could not find a description of the service listed among EPA federal information systems that collect or track personally identifiable information. See <https://www.epa.gov/privacy/epa-federal-information-systems>. If EPA has determined that no SORN or Privacy Impact Assessment was required for this press release service, please provide copies of records that would explain or justify this decision.
- I am also seeking copies of requests for proposals, solicitations, invoices, contracts, agreements, payment records, training materials or instructional manuals about the EPA's press-release tracking service as described in the Washington Post. The records would presumably be in the possession of the Office of Public Affairs, which uses the service; the Office of Privacy; or the Office of Environmental Information. We understand that, based on our forensic examination of EPA press release emails, the EPA was using the services of Campaign Monitor Pty Ltd., which promises that its Insights tool will "deliver powerful email analytics for growing companies." It appears the EPA's use of this service ceased on or about Sept. 9, 2017, after publication of the Washington Post story and hours after The Associated Press began making inquiries with Campaign Monitor about its contractual relationship with the EPA Office of Public Affairs. Therefore, please also provide copies of emails sent to, or received by, employees or contractors in the Office of Public Affairs with employees or contractors of campaignmonitor.com between Nov. 8, 2016, and the date that processing actually begins on this request.

Please consider this an expedited request under the FOIA and EPA regulations, as this information is urgently required to inform the public about an actual or alleged federal government activity, namely potential violations of U.S. law and potentially privacy-violating activities in recent weeks by EPA employees. This request also is intended to evaluate the propriety and efficacy of the EPA press-release tracking service.

The EPA's public criticisms of Mr. Biesecker's reporting and The Associated Press represent a currently unfolding story, and have been the subject of numerous press articles or opinion pieces in recent weeks, including by the Washington Post, New York Times, MSNBC, GQ, Salon, Mother Jones, Breitbart and others.

Delaying release of this information harms the public interest because, in the interests of transparency, the public has a right to know whether wrongdoing has occurred and if wrongdoing were to be permitted to continue, the public would continue to be harmed.

I certify that I am a full-time employee for The Associated Press, the world's largest news-gathering organization with more than 1 billion readers, listeners and viewers.

Whether an "urgency to inform" exists depends on several factors: (1) whether the information relates to a currently unfolding story; (2) whether delaying release of the information harms the public interest; and (3) whether the request concerns federal governmental activity (see *Al-Fayed v. CIA*, 245 F.3d 300 (D.C. Cir. 2001)). In addition, "the credibility of a requester" is also a relevant consideration.

Please release any information pursuant to my requests as it is received and/or reviewed by your office, rather than waiting to send me all the material I have requested. If you have questions or need to contact me, I can be reached at (202) 236-5158 and my e-mail address is tbridis@ap.org.

As I am making this request on behalf of the AP for use in reporting the news, no fees may be assessed for searching or reviewing documents sought by this request, and no duplication fees should be charged to the AP for the first 100 pages of material (see 5 U.S.C. § 552(a)(4)(A)(ii)(II)).

AP hereby consents to pay duplication charges up to a total not to exceed \$250. Please notify me in advance before incurring any duplication charges in excess of this amount.

As you know, the Act permits you to reduce or waive the fees when the release of the information is considered as "primarily benefiting the public." I believe that this request fits that category and I therefore ask that you waive any fees. If all or any part of this request is denied, please cite the specific exemption(s) that you think justifies your refusal to release the information and inform me of your agency's administrative appeal procedures available to me under the law.

To the extent that you affirm, in whole or in part, the denial of disclosure, we ask that you provide us with a list describing with specificity the categories of documents that have been withheld and explaining the grounds for the withholding (see *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973)).

I would appreciate your handling this request as quickly as possible, and I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, reading "Ted Bridis". The signature is fluid and cursive, with the first name "Ted" and last name "Bridis" clearly distinguishable.

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